

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRADLEY DALE HULL,

Defendant.

NO: 2:20-CR-0128-TOR-2

ORDER DENYING SEVERANCE

BEFORE THE COURT is Defendant's Motion for Severance. ECF No. 60. The United States filed its opposition. ECF No. 67. The motion was submitted for consideration without oral argument. Having reviewed the file and the records therein, and the completed briefing, the Court is fully informed.

On October 21, 2020, the grand jury returned an Indictment charging Defendant with conspiracy to distribute methamphetamine and two counts of distribution of methamphetamine (counts 1, 2, and 4) and a forfeiture allegation. ECF No. 3. Also charged in the same Indictment is co-defendant Russell Bruce Clark. Mr. Clark is charged in the same three counts as Defendant and is also

1 charged with distribution of methamphetamine in count 3. Defendant now moves
2 to have his case severed from co-defendant Clark's case. Specifically, Defendant
3 moves to "sever count 3 because it is not logically related to the other counts in the
4 indictment, and to sever the defendants for trial because a joint trial would be
5 manifestly prejudicial." ECF No. 60 at 11.

6 DISCUSSION

7 Rule 14 provides that "[i]f the joinder of offenses or defendants . . . appears
8 to prejudice a defendant," then "the court may . . . sever the defendants' trials, or
9 provide any other relief that justice requires." Fed. R. Crim. P. 14(a). "The district
10 court's denial of a motion to sever is reviewed for an abuse of discretion." *United*
11 *States v. Fernandez*, 388 F.3d 1199, 1241 (9th Cir. 2004). "The test for abuse of
12 discretion by the district court is whether a joint trial was so manifestly prejudicial
13 as to require the trial judge to exercise his discretion in but one way, by ordering a
14 separate trial." *Id.* (quoting *United States v. Baker*, 10 F.3d 1374, 1386 (9th Cir.
15 1993)). Severance is appropriate under Rule 14 "only if there is a serious risk that
16 a joint trial would compromise a specific trial right of one of the defendants, or
17 prevent the jury from making a reliable judgment about guilt or innocence." *United*
18 *States v. Stinson*, 647 F.3d 1196, 1204–05 (9th Cir. 2011) (quoting *Zafiro v. United*
19 *States*, 506 U.S. 534, 539 (1993)). "There is a preference in the federal system for
20 joint trials of defendants who are indicted together." *United States v. Barragan*,

1 871 F.3d 689, 701–02 (9th Cir. 2017) (quoting *Zafiro v. United States*, 506 U.S. at
2 537.) Indeed, a “joint trial is particularly appropriate where the co-defendants are
3 charged with conspiracy.” *Fernandez*, 388 F.3d at 1242.

4 Essentially, Defendant contends count 3 only applies to co-defendant Clark
5 and that he would be prejudiced by allegations against Clark that do not apply to
6 him. The Court anticipates issuing a limiting instruction to the jury that “you must
7 decide the case for each defendant on each charge against that defendant
8 separately.” All prejudice as to count 3 would then be cured.

9 Defendant further argues that “joinder of Clark with the defendant for trial
10 would be manifestly prejudicial because, aside from extrajudicial statements made
11 by Clark, there is no other substantive evidence against the defendant. A jury
12 would not be able to put out of their minds or compartmentalize incrimination
13 statements made by Clark if those statements were admitted at a joint trial as
14 evidence against Clark.” ECF No. 60 at 6.

15 The statements Clark made during the drug transactions were allegedly
16 made during the course of and in furtherance of the conspiracy. Fed. R. Evid.
17 801(d)(2)(E). If the Government lays the proper foundation, these statements are
18 admissible against Defendant and Clark at a joint trial without violation of
19 Defendant’s confrontation rights. *See e.g., Bourjaily v. United States*, 483 U.S.
20 171, 181–184 (1987) (statements made unwittingly to a Government informant).

1 Moreover, *Bruton v. United States*, 391 U.S. 123 (1968) is categorically
2 inapplicable to the facts of this case. Clark did not confess and implicate
3 Defendant.

4 **ACCORDINGLY, IT IS HEREBY ORDERED:**

5 Defendant's Motion for Severance, ECF No. 60, is **DENIED**.

6 The District Court Executive is directed to enter this order and provide
7 copies to counsel.

8 DATED February 5, 2021



12
13
14
15
16
17
18
19
20

A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge